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TESTIMONY

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SENATE COMMITTEE ON RULES AND ADMINISTRATION

ELECTION REFORM HEARING

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Chairman Dodd, Ranking Member McConnell, distinguished members of this Committee, I would like to thank you for holding this important hearing on Election Reform. I look forward to legislation this session such as S. 565, THE Equal Rights Voting Act introduced by Senator Dodd (D-CT) and in the House as H.R. 1170, introduced by Judiciary Committee Ranking Member John Conyers (D-MI), so that we can continue to address the process of reforming our democratic voting system.

Four decades ago, thousands of Americans from all races, economic classes, and from all walks of life, risked their lives raising their collective voice in the civil rights movement which challenged the un-American systems of discrimination that prevented millions of Americans from exercising their right to vote. While many Americans

sacrificed and lost a great deal in this struggle, one of the great fruits of their sacrifices was the 1965 Voting Rights Act.

Mr. Chairman, I am a product of the 1965 Voting Rights Act. But I'm also a direct result of the 1965 Voting Rights Act, which created the 18th Congressional District of Texas, which I represent. Since its creation, three other Americans and myself have proudly served the people of Texas. As a product of this process and the 1965 Voting Rights Act, I have always believed that voting is a right, a privilege, a responsibility, and a passion.

The people's vote is the people's voice. It is our most precious instrument of democracy, justice, and the truest manifestation of freedom. Yet, thirty-five after the passage of the Voting Rights Act there are still members of our Southern states including Texas who remain to this day unregistered to vote. This is deeply disturbing.

On November 7th, 2000, only a fraction of Americans were able to exercise their right to vote and have those votes counted, while thousands, and perhaps even millions of voters were denied this constitutional right as guaranteed by the Fifteenth Amendment. But beyond these mistakes, there have been serious allegations of violations of the Sections 2 and 5 of the *Voter Rights Act of 1965*, 42 U.S.C. sec. 1973, which mandates the obligation and responsibility of the Congress to provide appropriate implementation of the guarantees of the Fifteenth Amendment to the Constitution, which states "the fundamental principle that the right to vote shall not be denied or abridged by the States

or the Federal Government on account of race or color.” Perhaps it was James Baldwin who anticipated this reality in 1962 when he wrote in The Fire Next Time: “Color is not a human or personal reality; it is a political reality.”

Section 2 states of the Voting Rights Act similarly states:

No voting qualifications or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the rights of any citizen of the United States on account of race or color.

The Voting Rights Act of 1965 clearly affirms the right of *every* U.S. citizen to cast a ballot and have that ballot be counted. These fundamental rights must be protected and enforced without compromise and without regard to the voter's race.

The House Report on the Voting Rights Act reiterated this:

[Section 2] grants... a right to be free from enactment or enforcement of voting qualifications... or practices which deny or abridge the right to vote on account of race or color.” H.R. Rep. No. 439, 89th Cong., 1st Sess., 23 (1965).

In the aftermath of the 2000 election, it has become horrifyingly clear that the nation's voting procedures are still plagued by a systemic cancer that disenfranchises Americans by preventing them from casting their votes and from having those votes counted.

These violations of the Voting Rights Act in the 2000 elections represent an American tragedy of justice of monumental proportions. Yet, despite the clarity of the

law on this subject, we know today that such violations of fundamental voting rights did occur during the November 7th elections throughout the nation. Victims and witnesses to Election Day irregularities and discriminatory practices at voting precincts came forward in significant numbers to tell their stories of how their votes were discarded and their voices silenced. My office remains inundated with countless letters, phone calls, and e-mails of stories of violations, and demands that justice and order be restored to this process.

In recent months several public hearings have been held around the nation to discuss and analyze the testimony of witnesses and victims of voting irregularities, and to seek solutions. Some of these hearings include a Democratic Caucus Special Committee on Election Reform hearing held in San Antonio, Texas, an NAACP hearing, and a Florida State Assembly hearing. Testimony heard from law enforcement, poll workers, educators, civil rights organizations, state and federal legislators, and disenfranchised voters and recounted the following:

1. That citizens who were properly registered were denied the right to vote because election officials could not find their names on the precinct rolls;
2. that registered voters were denied the right to vote because of minor discrepancies and clerical errors;

3. that first-time voters who sent in voter registration forms prior to the state's deadline for registration were denied the right to vote because their registration forms were not processed;

4. that African-Americans voters were singled out for criminal background checks at some precincts and that one voter who had never been arrested was denied the right to vote after being told that he had a prior felony conviction;

5. that African-American voters were required to show photo identification while white voters at the same precincts were not subjected to the same requirement;

6. that voters who requested absentee ballots did not receive them but were denied the right to vote when they went to the precinct in person on Election Day;

7. that hundreds of absentee ballots of registered voters in various counties throughout the nation were improperly rejected by the Supervisor of Elections and not counted;

8. that African-American voters who requested assistance at the polls were denied assistance;

9. that African-American voters who requested the assistance of a volunteer to translate the ballot for limited proficient voters were denied such assistance.

The need for election reform is the challenge of all Americans. That's why it's imperative that Congress continues its serious review and comprehensive reform of our election process in this nation. President Bush himself recognized this urgency, telling members of Congress: "This is America. Everyone deserves the right to vote." Congress was reaffirmed of President Bush's commitment to the protection of the right to vote when the President's spokesman later assured members of Congress that the "President wants to make certain that one of the focuses of attention this year is electoral reform." A letter recently sent to President Bush by virtually every House Democrat, called on the administration fulfill this promise by providing "essential guidance and leadership on a national problem", yet today, half a year after the election, we are still without such leadership. So I call on the Attorney General of the United States to begin a full investigation of all alleged voting improprieties, because we must clear the air.

So what be done to remedy these problems for the future? Recent studies, including one done by the House Committee on Government Reform indicate that outdated technology is part of the problem, and that newer technologies reduce mistakes, and may even expedite increased volume of votes cast. This study analyzed upgrading voting technologies in Detroit which has the highest poverty rate of any U.S. city, as well as one of the highest minority populations. It studied the effects of voter education and the replacement of the antiquated punch card machines, such as those used in Florida,

with new optical scanner machines that let voters know when the voter made a mistake and gave the voter an opportunity to fix it. The results of this study are staggering. The percentage of uncounted votes for President in Detroit decreased by almost two-thirds, from almost 50% above the national average in the 1996 election in which punch cards were used, to almost 50% below the national average in the 2000 election in which the new machines were used. Detroit also reduced the percentage of uncounted votes significantly, from 7% in precincts with high rates of uncounted votes in 1996, to less than 1% using the new machines in 2000.

Another process that must be reformed is "purging" which includes eliminating a person's name from the voting rolls when that person has not voted recently, thus requiring the person to re-register before voting again. This is particularly problematic because voters are often not notified when their names have been purged. As a result, when the person arrives at the polls to vote, he or she is denied access. According to testimony by Hilary O. Skelton of the NAACP before this Committee, in the 2000 election in Florida, purging occurred disproportionately in predominately African-American precincts and counties including Duval and West Palm Beach.

This kind of automatic and simplistic process of purging people from the voting rolls is an extremely harsh and unfair practice. Worse still, this process varies from state to state and from county to county. If someone has voted recently, it demonstrates his or her intent be involved in the electoral process. We must ensure that they have every

opportunity to demonstrate that intent, have their vote counted, and have their voice heard.

I suggest that there be a uniform national ten-year period of inactivity before a voter's name is purged. This is a reasonable and set amount of time that would give people an opportunity to anticipate being purged, so that they can either vote, thereby resetting the ten-year clock, or, if they have already been purged, to allow them the opportunity to re-register before going to the polling location to vote.

Another necessary improvement is to ensure "provisional voting" in every election. As a result of voting roll irregularities and purging, many voters are erroneously denied the right to vote at the polls. To remedy this problem, many jurisdictions have begun using "provisional ballots" which can be cast at their regular voting precinct in the event that they are denied a regular ballot, but may also be obtained by voters at another precinct within the jurisdiction in the event their precinct closes early or runs out of ballots.

Also needed is education. We must educate those who work at the polls and in the local precincts, so that they can anticipate problems beforehand, and prepare. Workers should also be educated in the newer voting technologies that are developing. We must also educate our law enforcement officers, so that they understand the legalities and cultural sensitivities inherent in the voting process, and do not inadvertently interfere.

We must also educate the media so they are more sensitive to the influence and impact that their reporting has on people who have not yet made it to the polls. Many people, myself included, believe that the media played a key roll in last year's election by calling the election too early for Al Gore and Joe Lieberman, which resulted in many people not going to the polls to vote, believing that their vote would not have an effect on the election.

And lastly, we must educate and empower our voting citizens, so that they know their rights, understand how the voting process works, and can operate the newer technologies that are anticipated in the near future.

We must also address the great problem of the language barrier, which disadvantages millions of Americans every election. Chapter 20 of The Voting Rights Act of 1965 anticipates this:

[W]here State and local officials conduct elections only in English, language minority citizens are excluded from participating in the electoral process... The Congress declares that, in order to enforce the guarantees of the fourteenth and fifteenth amendments to the United States Constitution, it is necessary to eliminate such discrimination by prohibiting English-only elections

As such, at the very least, in precincts where there are large numbers of non-English-speaking people, workers should be informed so that bi-lingual poll workers are on-site.

To help facilitate greater and more regular voter turnout, I strongly believe that we need to make Election Day a national holiday in order to reconcile employment and

school commitments, which keep many people from voting or participating in this important election process. Such a holiday would also allow our young people to get involved in the voting process, and would allow for the hiring of more young people at the polling locations. In order for there to be true electoral reform, our youth must take a more active roll, and we must give them the tools and the opportunity to do so.

That's why I introduced H.R. 934 in Congress on March 7, 2001, establishing National Election Day on the 2nd Tuesday of November, in presidential election years as a legal public holiday. This bill will merely federalize what some states have done with great success, so that students, employers, and employees in the private sector will be able to exercise their constitutional right to vote or take part in the electoral process as election volunteers with no restraints. Everyone should be able to afford to cast his or her vote. As a nation, we simply cannot afford not to.

To ensure that this sacred right is secured, I have also introduced H.R. 60, the Secure Democracy for All Americans Act, which would develop greatly needed uniform electoral standards which may be adopted by the States by calling on the establishment of a Commission on the Comprehensive Study of Voting Procedures to study and report to the President and Congress on all issues relating to voting procedures in Federal, State, and local elections. This study can be extremely helpful in federal government research of voting technologies, and can also provide important information on the actual testing of new voting systems prior to their widespread implementation in local governments.

In addition, I have drafted a bill that would modify the Secure Democracy for all Americans Act by assigning the Federal Election Commission the roll of providing grants to states and local communities to enable them to efficiently implement this study.

Finally, I have recently founded the bipartisan Congressional Election Caucus to enable all members of Congress to engage in a serious review and dialogue of the election process in this nation as a recognition of the disenfranchisement of voters who lost their fundamental rights as citizens of the United States, to vote because of voter confusion, poor voter machinery, or work commitments. I invite member from both sides of the isle to join this important Caucus, because a bi-partisan effort is needed.

It is in this spirit of bi-partisanship that I would like to thank all members engaging in electoral reform legislation, and would like to thank Ranking Member Mitch McConnell (R-KY) for his effort in introducing S.218, the Election Reform Act of 2001.

While statutes were not enacted during this past election to prevent minorities from voting, deliberate actions were taken that prevented minorities, women, the disabled, the elderly and thousands of Americans from invoking their constitutional right to vote. Section 1973i of the Voting Rights Act of 1965 unequivocally forbids such disenfranchisement:

No person acting under color of law shall fail or refuse to permit any person to vote who is entitled to vote... or is otherwise qualified to vote, or willfully fail or refuse to tabulate, count, and report such person's vote.

These actions demonstrate a grave injustice upon our democratic system that dims the light of justice and freedom that many follow around the world. We must not let these actions be revived again, because if we do, we diminish the blood, the sweat, and the tears of the struggle that our Founders and our ancestors fought to preserve the right of every citizen's voice to be heard regardless of race, ethnicity, gender, age, and yes, even political affiliation.

The Fifteenth Amendment of the Constitution tells us that "The Congress shall have the power to enforce this article by appropriate legislation." Let us make a commitment to the American people today, and to those around the world, to rise together to this challenge. Thank you.